

## **REMARKS**

Claims 1 to 15 are pending in the present application. These claims have been examined on their merits and are currently under final rejection.

### **The Rejection under 35 U.S.C. §103(a).**

The Examiner has upheld the rejection of Claims 1 to 15 under 35 U.S.C. §103(a) as being obvious and unpatentable in view of d'Eon *et al.* (U.S. Pat. No. 6,006,197) and Robinson (U.S. Pat. No. 5,918,014)) and further in view of Cannon (U.S. Pat. No. 6,286,055). This rejection is in error for several reasons.

The Examiner's characterization of d'Eon and Robinson is essentially correct in that this combination could be interpreted as correlating an internet-based business result with an internet advertising schedule. The present invention goes well beyond the internet to encompass multiple forms of media and processes that are distinguishable from the internet art. The Examiner combines the internet art references of d'Eon and Robinson with the media planning tool of Cannon remarking: (1.) [p.2, ¶ 2] "Canon was introduced to show that one of ordinary skill in the art at the time of the invention was aware that utilizing an advertising optimization methodology allows companies to interactively create, score, rank and compare various proposed or actual advertising strategies. Canon also specified that the methodology is equally applicable to television viewing, web visitation, readership or magazine and newspaper."; and (2.) [p. 3, ¶ 3] "Canon is directed to a database mining engine (DME) that collects advertising data on an ongoing basis wherein information is tracked allows companies to compare advertising strategies." The latter statement about Cannon is used as a reason for disagreeing with the Declarations of experts that technology at the time of the invention did not provide the granular data necessary for the ongoing performance evaluation of

offline advertising media. The Applicant stands on the factual accuracy of the Declarations of record and respectfully submits that the Examiners characterization of the statements of the Declarations in view of the teachings of Cannon as applied to the subject invention is in error.

The present invention as claimed deals with two swirling clouds of data: (i) multimedia ads and where they run; and (ii) business results (performance data for each ad). The invention iteratively processes these data, evaluates processed performance data in view of business objective(s), and reacts to the evaluation by modifying the ads as necessary on an ongoing basis. As noted in the Declarations, the state of the art in multi-media advertising campaigns at the time of the invention involved fixed-period campaigns including trying to get smarter about where you place your ads (where they run, viz-`a- viz Cannon) to target the audience you are most interested in reaching. The theory being that if you could focus on the people most pre-disposed to buy your product, that would ultimately cause a business result; this is what Cannon teaches. There was no attempt at the time of the invention to actually connect the business result (performance data of the invention) to multi-media advertising schedules, let alone to process and evaluation business result/performance data interactively on an ongoing basis in a common reporting interface and modify ongoing ads. The real-time or near real-time granular data necessary to practice the offline elements of the present invention was simply not available in the art at the time of the invention. The DME of Canon (e.g., data mining the Nielsen TV viewing data or other offline data) is a media planning tool that attempts to identify/compare the best advertising strategies by defining the target audience, by fleshing out or digging into available audience data for where your ad runs to hopefully cause a business result; NOT by determining business results as taught in the present invention. This is a fundamental factual distinction between the cited art and the present invention that is apparently not recognized by the Examiner. The statements of the Declarations (Messrs. Monahan & Giannantonio, both of whom qualify as experts in the field of the invention)

regarding the availability of offline granular data and the state of the art of multi-media advertising at the time of the invention, are factually accurate and have been misinterpreted along with the teaching of Cannon.

The Examiner states [p. 3, ¶3], as a reason for upholding the obviousness rejection, that “The Declarations claim that technology at the time of the invention could not provide the granular data necessary for the ongoing performance evaluation of offline advertising media.” The Examiner disagrees with this Declaration statement citing as a reason support from the DME of Cannon. The Examiner citing Cannon seems to be interpreting the word “performance” in light of the Cannon teaching as “did the ads run in places where they would expose people I most wanted to reach.” Performance in the present invention is neither the audience delivery technology of Cannon nor the online cookie data of d'Eon *et al.*/Robinson, but rather is a business result (i.e, store foot traffic, sales scanner data, etc.; performance data of claim 8) of a multimedia ad campaign, not necessarily even based on the Internet (where data is relatively easy to capture). Cannon deals only with data on where ads run, not data of advertising results. The factual statements of the Declarations of record (expert testimony beyond the level of skill one of ordinary skill in the art at the time of the invention) remain uncontroverted in stating that there were limitations in the art with respect to capture of granular performance data (business results) with respect to offline media components of multimedia ad campaigns (c.f., ¶s 8 and 5 of the Declarations of Messrs. Monahan and Giannantonio). As supported by the Declarations, at the time of the invention capturing of real time or near real time granular performance data with mapping to the advertising stimuli according to the teaching of the invention to enable mid-flight optimizations was clearly not the state of the art. Notwithstanding the possibility of mid-flight internet ad modifications, multi-media ad campaigns at the time of the invention would run for a fixed of time period (typically several months) after which there would be a report typically concluding “sales are good” or “sales are bad” or the like.

Cannon teaches audience characterization for optimizing ad delivery and discloses a DME for such purpose in offline and online applications. If the Examiner is contending that the DME of Cannon can mine the real-time offline granular performance data of the continuously interactive invention, this is not taught by Cannon and is a hindsight extrapolation without support in the art (either directly, by TMS criteria, or by general knowledge or those of ordinary skill in the art at the time of the invention). Such data (i.e., sales scanner data) could not be mined as they were unavailable at the time of the invention. All steps and elements of the method and system of the invention have not been shown, either individually or collectively, let alone providing any basis for filling gaps and constructing the combinations of the invention as claimed.

The teachings and claims of the present invention are based on the idea that business objectives (i.e., increased revenues, increased profits, branding, conversion, insight, etc. of claim 10) from multimedia ad campaigns will come from customized reporting of performance/business result data (store foot traffic, sales scanner data, etc. of claim 8) for each product (i.e., the common reporting interface of the invention with granular data from disparate sources cleaned and sorted in a way so that you can align different data sources side-by-side). There are today tools that measure product purchase (i.e., they give a demographically representative panel of households electronic devices to scan every bar code of purchased products that then correlate electronic data of a households purchases with advertising stimuli), tools that measure store traffic, and even tools that correlate awareness with advertising, but such means of obtaining granular performance data were not available at the time of the present invention. Consistent with the disclosure of the present invention, the achievement of perhaps the most visible business objective of increased revenues or profits resulting from successful performance/business results of a multimedia ad campaign is not always the main or only business objective. For example, advertising does not always immediately drive sales and successful accomplishment of certain business objectives (i.e., branding, conversion or the

like of the invention) can be a first or intermediate step toward an actual transaction.

In light of the Supreme Court decision of KSR International Co. v. Teleflex Inc. et al., 127 S. C. 1727 (2007) and the subsequent Focarino Memo (May 3, 2007) the four Graham factual inquiries (determining the scope and contents of the prior art; ascertaining the differences between the prior art and the claims at issue; resolving the level of ordinary skill in the pertinent art; and evaluating evidence of secondary considerations) should be followed. Also, the TSM (teaching, suggestion, or motivation) Test remains part of the determination of obviousness without rigid application but with forceful instruction on the manner in which the TSM Test is to be applied, including the necessity to provide the reason(s) why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed. Conclusory statements of obviousness *in lieu* of “reasons to combine” are not sufficient.

In the determination of obviousness under 35 U.S.C. §103(a), three patents (d'Eon *et al.*, Robinson, and Cannon) have been identified defining the scope and content of the prior art. The reason why it would be obvious for a person of ordinary skill in the art to combine these references is unclear and conclusory in nature, as in the art there is no specific teaching, suggestion or motivation to combine these references. As discussed hereinabove, the Applicant respectfully (i) disagrees with the Examiner's position on the differences between that the art and the present invention concluding that the art provides the invention; and (ii) the Examiner's contention, contradicting the statements of the Declarations of record based on Cannon, that real-time granular data on performance (business results) of offline ads were available at the time of the invention. Canon does, as the Examiner states in the Office Action, teach advertising optimization data-mining methodology for offline and web advertising strategies, but only with respect to data for audience optimization. Cannon is a pre-launch media planning tool and clearly does not

teach the acquisition of ongoing performance data/business results granular data necessary to practice the present invention. The combination of art references does not yield the invention. Cannon merely helps plan ads to hit target audiences. Whereas the internet art of d'Eon and Robinson could possibly provide real-time performance/business results data leading to modification of web advertisements, comparable real-time offline media performance/business results data at the time of the invention was limited and multi-media ad campaigns used post-campaign measurements (c.f., Declarations of record). In further contrast, the present invention, as claimed, teaches real-time acquisition of offline performance/business results data in multi-media advertisements that is integrated with business objectives, processed, evaluated, and integrated into a common reporting interface to determine the respective individual contributions of the multi-media ads and thereby permit ongoing reactions modifying the ads as necessary. In the sophisticated world of contemporary multi-media advertising and the limited number of experts in the field, the gaps in the art teachings to reach the essential continuously interactive elements of the claimed present invention (i.e., offline real-time granular data, integrated multi-media performance/business results data with business objectives, providing processed and evaluated integrated performance/business results multi-media data side-by-side in a common reporting interface to determine the individual effective contributions of each ad, and providing ongoing modification of individual members of a multi-media ad portfolio) cannot reasonably be filled by general knowledge in the art. It's neither reasonable or appropriate to suggest or imply that it would be obvious with the benefit of hindsight to try or otherwise construct Applicant's invention in view of the limited art teachings or general knowledge of those of ordinary skill in the art at the time of the invention.

The Declarations of record provide statements of long-felt commercial need and failure of others (i.e., the limitations of multi media ad campaigns to post-campaign measurements [¶ 6 of Monahan Declaration]; the art limitations causing most experience advertising professionals not think of ongoing

measurements of their offline media components of their multi-media ad campaigns or real-time evaluating, reacting and modifying ongoing offline multi-media ad portfolio components in view of desired business objectives [¶8 of Monahan Declaration; ¶ 5 of Giannantonio Declaration). These representations are secondary indicia of unobviousness that have not been but should appropriately be considered.

The present invention provides a novel and unobvious continuously interactive rapid response marketing system and method for optimizing various marketing communications of multi-media advertising campaigns. The claims as currently presented distinguish from the cited art and represent patentable subject matter. Reconsideration and allowance, being in order, are earnestly solicited.

Respectfully submitted,

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By:

A handwritten signature in black ink, appearing to read 'T. Monahan', is written over a horizontal line.

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